



PATENT
Attorney Docket No. 05725.1213-00

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

| | | |
|-----------------------------|---|-------------------------|
| In re Application of: |) | |
| |) | |
| Nadia GARDEL et al. |) | Group Art Unit: 1617 |
| |) | |
| Application No.: 10/603,698 |) | Examiner: L.M. Williams |
| |) | |
| Filed: June 26, 2003 |) | |
| |) | Confirmation No.: 8001 |
| For: WATER-IN-OIL EMULSION |) | |
| FOUNDATION |) | |

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

DECLARATION UNDER 37 C.F.R. § 1.132

I, Ozée Emmanuelle , do hereby declare:

1. I am a French citizen, residing at 8 rue Emile Goeury , 94320 Thiais
2. I have received a degree in Chemistry from University of Paris VI
3. I have been employed by L'ORÉAL since 1987 , and I am presently

Engineer of development . During my employment at L'ORÉAL, I have been engaged
in research and development regarding skin care and make up developement

4. Given my education and experience, particularly in the area of foundation
formulation I consider myself able to provide the following testimony based on
experiments conducted by me or under my direct supervision.

I. PREPARATION

5. Each emulsion provided in Table 1 below, Example 1 and Compositions A and B, was prepared as discussed in paragraph [089] of the specification of U.S. Patent Application No. 10/603,698 (hereinafter "the '698 application").

6. Example 1 corresponds to the foundation of example 1 in the specification of the '698 application. See '698 application at pages 24-25 of the specification. Compositions A and B differ from Example 1 with respect to the amounts of dimethicone copolyol. Specifically, composition A comprises 0.5% by weight of dimethicone copolyol (KF-6017 from Shin Etsu), and composition B comprises 4% by weight of dimethicone copolyol (KF-6017 from Shin Etsu). The amount of dimethicone copolyol in Compositions A and B are outside the 5-10% range of present claim 1. For consistency, in each composition, Example 1 and compositions A and B, the balance was comprised of cyclopentasiloxane oil. The values in Table 1 below are expressed as % by weight.

Table 1.

| | Ex 1 (invention) | Composition A (Comparative) | Composition B (Comparative) |
|--------------------------------------------------------------------------------|---------------------|--------------------------------|--------------------------------|
| Isododecane | 13 | 13 | 13 |
| Cyclopentasiloxane | 16 | 20,5 | 17 |
| Cyclohexasiloxane | 8 | 8 | 8 |
| Polydimethylsiloxane (DC 200 Fluid - 5 cst from the company DOW CORNING) | 2 | 2 | 2 |
| Isoeicosane | 3 | 3 | 3 |
| Cetyl dimethicone copolyol (Abil® Em 90 from the company GOLDSCHMIDT) | 0,8 | 0,8 | 0,8 |
| Dimethicone copolyol (KF6017 from Shin Etsu) | 5 | 0,5 | 4 |
| Polyglyceryl isostearate (4 mol of glycerol) | 0,6 | 0,6 | 0,6 |
| Hectorite | 1,4 | 1,4 | 1,4 |
| Iron oxides coated with perfluoroalkyl phosphate | 2 | 2 | 2 |
| Titanium oxide coated with perfluoroalkyl phosphate | 5,5 | 5,5 | 5,5 |
| Nylon powder | 4 | 4 | 4 |
| Butylene glycol | 10 | 10 | 10 |
| Sodium chloride | 0,7 | 0,7 | 0,7 |
| Preservatives | qs | qs | qs |
| Water qs | 25,3 (qsp 100 %) | 25,3 (qsp 100 %) | 25,3 (qsp 100 %) |

II. TESTING PROCEDURE AND RESULTS

7. After 24 hours at room temperature (25°C), the viscosity of each composition was measured with a Rheomat 180 viscometer equipped with the mobile n°2, shearing rate of 200 s⁻¹, after 10 minutes of mobile rotation. These measurements are provided in Table 2 below.

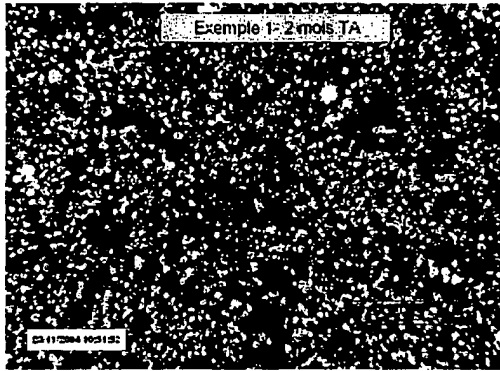
Table 2.

| | After 24 hours (Pa.s⁻¹) |
|----------------------|-----------------------------------------------|
| Example 1 | 0.35 |
| Composition A | 0.13 |
| Composition B | 0.22 |

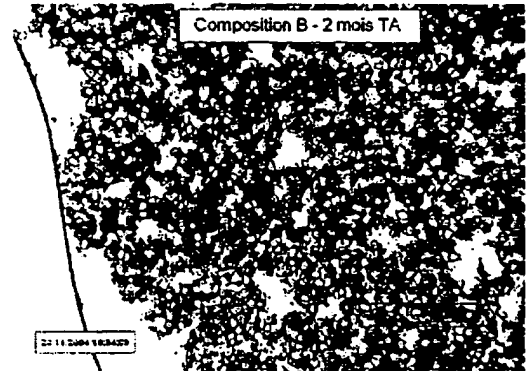
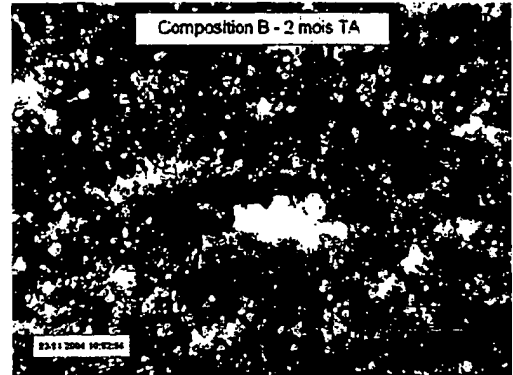
8. As shown in Table 2, the viscosity of composition A after just 24 hours was significantly less than the viscosity of Example 1 and composition B, and it was determined that composition A was not stable after 24 hours at room temperature.

9. After 2 months at room temperature, Example 1 and composition B were analyzed under a microscope to examine their homogeneity and stability. The following photos were taken of Example 1 and Composition B.

Example 1



Composition B



10. As shown in the photos, the composition of Example 1 is a homogeneous emulsion with very small droplets of water; whereas, the emulsion according to composition B was not homogeneous and has large droplets of water. Thus, these photos show that Example 1 is substantially more homogeneous and stable than composition B.

11. Accordingly, it is evident that the Example 1 composition has unexpectedly superior homogeneity and stability as compared with compositions A and B.

12. I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true, and further, that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Dated: October 1, 2008

By: Ozée Emmanuelle

A handwritten signature in black ink, appearing to read 'Ozée', with a long horizontal stroke extending to the left and a curved flourish underneath.